

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SURGICAL CENTER OF
SOUTHFIELD, L.L.C., d/b/a
Fountain View Surgery Center,
and ISPINE, P.L.L.C.,

Plaintiffs,

Case No. 2:19-cv-11458
District Judge Gershwin A. Drain
Magistrate Judge Anthony P. Patti

v.

ALLSTATE PROPERTY
AND CASUALTY
INSURANCE COMPANY,

Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT’S
MOTION TO COMPEL (ECF No. 56)**

This matter came before the Court for consideration of Defendant’s motion to compel discovery from Plaintiff ISpine, PLLC (ISpine) and request for award of costs (ECF No. 56), ISpine’s response in opposition (ECF No. 61), Defendant’s reply (ECF No. 63), and the parties’ joint list of unresolved issues (ECF No. 80). Judge Drain referred this motion to me for a hearing and determination. (ECF No. 57.) As a result of the COVID-19 pandemic and Michigan Governor Whitmer’s order to shelter in place, a telephonic hearing was held on April 29, 2020, at which counsel appeared by telephone and the Court entertained oral argument regarding Defendant’s motion.

Upon consideration of the motion papers and oral argument, and for all of the reasons stated on the record by the Court, which are hereby incorporated by reference as though fully restated herein, Defendant's motion to compel (ECF No. 56) is **GRANTED IN PART** and **DENIED IN PART** as follows:

- Defendant's motion to compel is **DENIED** insofar as Defendant argues ISpine improperly asserted the physician-patient privilege. Based on the representations ISpine's counsel made on the record, the Court sees no abuse of the physician-patient privilege, and ISpine has no duty to further supplement the discovery responses it withheld or redacted as a result.
- To the extent Dr. Stefan Pribil can recall any medical journals, articles, literature, or other documents used by ISpine to determine that IONM can be used during surgeries, ISpine must **SUPPLEMENT** its response to Request to Produce No. 20 (**RTP 20**) (ECF No. 56-6, PageID.1106-1107) by producing those documents, signed by ISpine's counsel Jason Hagelthorn, on or before **Friday, May 1, 2020**. This order does not preclude ISpine from use of medical journals, articles, literature or research for rebuttal purposes.
- ISpine must also **SUPPLEMENT** its response to **RTP 21** (ECF No. 56-6, PageID.1107-1108) by **Friday, May 1, 2020**, to the same extent possible as stated above for RTP 20, and with the same reservation of rights.
- Defendant's motion to compel supplemental responses to **RTPs 31 and 32** is **DENIED**.
- On or before **Wednesday, May 13, 2020**, ISpine's counsel must certify that he and ISpine made diligent efforts to search for and obtain documents in ISpine's possession, custody, or control, Fed. R. Civ. P. 34(a)(1), including items which are "reasonably available," *Flagg v. City of Detroit*, 252 F.R.D. 346, 353 (E.D. Mich. 2008), to ISpine that are responsive to

RTPs 6, 9, 12, 14, 16, 17, 18, 26, and 30 (ECF 56-6, PageID.1099-1105, 1110-1113), and produce those documents, if any. Accordingly, ISpine's objections to **RTPs 6, 14, 17, and 18** are **OVERRULED**.¹

- The Court **SUSTAINS** ISpine's objections to **RTPs 7 and 13** (ECF No. 56-6, PageID.1100, 1102). Considering the factors listed at Fed. R. Civ. P. 26(b)(1), they are overbroad and beyond the scope of discovery. The Court also **SUSTAINS** ISpine's objections to **RTP 19** (ECF 56-6, PageID.1106) as to overbreadness, but ISpine must **SUPPLEMENT** its response to **RTP 19** – subject to the same requirements spelled out in the previous paragraph of this order – on or before **Wednesday, May 13, 2020**, by producing responsive documents related to Brian Slating, if any.
- ECF No. 59 is **STRICKEN** from the record, as it fails to comply with E.D. Mich. Local Rule 5.1(a)(1)(B) related to captions, and E.D. Mich. LR 26.2(a), which prohibits the filing of discovery materials.

Finally, the Court awards no costs, neither party having prevailed in full.

Fed. R. Civ. P. 37(a)(5)(C).

IT IS SO ORDERED.

Dated: May 1, 2020

s/Anthony P. Patti

Anthony P. Patti
UNITED STATES MAGISTRATE JU

¹ The Court has modified its initial rulings on the record related to RTPs 6, 7, 13, 14, 17, 18, and 19 so that they are consistent with the Court's subsequent rulings on Plaintiff's objections.